

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DIANNA ROQUE

Claimant

VS.

FARMLAND FOODS, INC.

Respondent

Self-Insured

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Docket No. 258,655

ORDER

Respondent appeals the December 20, 2000, preliminary hearing Order of Administrative Law Judge Bryce D. Benedict. Claimant was awarded temporary total disability benefits commencing October 21, 2000, and continuing until claimant is certified as having reached maximum medical improvement or released to substantial and gainful employment.

ISSUES

Did the Court exceed its authority by granting temporary total disability compensation to a claimant after claimant was terminated from her employment with respondent for cause, specifically, after claimant was alleged to have falsified her job application?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary record filed herein, the Appeals Board finds for preliminary hearing purposes that the appeal of respondent should be dismissed and the Order of the Administrative Law Judge remains in full force and effect.

Respondent argues the Administrative Law Judge exceeded his jurisdiction by granting temporary total disability compensation to claimant when the claimant was terminated from her position for falsifying her job application. Respondent cites Ramirez v. Excel Corporation, WCAB Docket No. 198,826 (January 1998). The Board acknowledges that Ramirez, which was appealed to the Kansas Court of Appeals and appears at 26 Kan. App. 2d 139, 979 P.2d 1261, *rev. denied* ___ Kan. ___ (1999), prohibits in certain circumstances the awarding of work disability to a claimant who, after being returned to accommodated work, is terminated when it is discovered that his or her employment

application was falsified at hire. However, in this instance, the Board does not reach that issue.

Appeals from preliminary hearings are strictly controlled. K.S.A. 44-551 limits the right of a party to appeal from a preliminary hearing order to situations where it is alleged that the administrative law judge exceeded his or her jurisdiction in granting or denying the relief requested. K.S.A. 44-534a discusses issues which are deemed jurisdictional from preliminary hearing appeals including: (1) did the worker sustain an accidental injury?; (2) did the injury arise out of and in the course of employment?; (3) did the worker provide both timely notice and timely written claim of the accidental injury?; and (4) do certain defenses apply?

K.S.A. 44-534a specifically grants an administrative law judge the jurisdiction to decide issues dealing with temporary total disability compensation.

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly. Allen v. Craig, 1 Kan. App. 2d 301, 564 P.2d 552, *rev. denied* 221 Kan. 757 (1977).

The Board has held numerous times that, when temporary total disability compensation is the sole issue, that determination to award benefits is not appealable from a preliminary hearing order. Therefore, this appeal should be dismissed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Bryce D. Benedict dated December 20, 2000, remains in full force and effect, and the appeal of the respondent in above matter should be, and is hereby, dismissed.

IT IS SO ORDERED.

Dated this ____ day of February 2001.

BOARD MEMBER

c: Bruce Alan Brumley, Topeka, KS
Kip A. Kubin, Overland Park, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director